

**II. Rejection under 35 U.S.C. § 102(e)**

The Examiner rejected claims 1-15 under 35 U.S.C. § 102(e) as being anticipated by Kawano et al. (Patent Application Publication No. US 2002/0123011 for U.S. Patent Application No. 10/026,419) ("Kawano") for reasons given at pages 2 and 3 of the outstanding Office Action. Applicants respectfully disagree for at least the following reason.

*Kawano* is not available as a prior art reference under § 102(e). Under § 102(e), a patent application filed and published in the U.S. can serve as a § 102 prior art reference only if its U.S. filing date is earlier than the earliest effective filing date of a U.S. patent application at issue. Here, *Kawano* is a published patent application, which has a U.S. filing date of December 26, 2001. The present application was filed on February 15, 2002, but claimed priority based on Japanese Application No. 2001-040618, filed February 16, 2001. Transmittal Letter dated February 15, 2002, page 2. (In addition, a certified copy of Japanese Application No. 2001-040618, filed February 16, 2001, was submitted on February 15, 2002.) Therefore, the present application is entitled to a priority date of February 16, 2001, which is prior to *Kawano*'s U.S. filing date, December 26, 2001. Accordingly, *Kawano* is not available as prior art reference under § 102(e), and cannot be used for a proper § 102(e) rejection.

Applicants respectfully request this rejection be withdrawn.

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### **III. Double Patenting Rejection**

The Examiner provisionally rejected claims 1-5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16-85 of copending Application No. 10/026,419. Office Action, page 4.

Applicants do not agree with the rejection, because, at least, as discussed above, the copending Application No. 10/026, 419 is not a valid § 102(e) prior art reference, therefore, cannot serve as a prior art reference even on a "provisional" double patenting basis. Furthermore, as tacitly recognized by the Examiner, since the copending Application No. 10/026, 419 is not yet issued as a patent, there is no basis at this time to make such a rejection.

Accordingly, Applicants respectfully request this rejection be withdrawn.

### **IV. Conclusion**

In view of the foregoing remarks, Applicants respectfully request the reconsideration and reexamination of this application, and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving the outstanding issue, she is respectfully urged to contact Applicants' undersigned representative at 202-408-4218.

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If there is any additional fee due in connection with the filing of this Reply, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: January 20, 2004

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